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Approved For Release 2003/03/06 : CIA-RDP86-00101R000100020038-1

ROUTING AND RECORD SHEET

DDA 72 C12

SUBJECT: (Optional)

FROM:

Director of Finance
1212 Key Bldg.

EXTENSION

NO.

DATE

6 January 1978

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

EQ Acting Deputy Director
for Administration
7D26 Hqs.

8 JAN 1978

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Mike:

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Mr. Fitzwater

1-10-78

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Mr. Mahan

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File Comments on Charter Legislation

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OGC Has Reviewed

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1. There is attached for your information, a copy of a memorandum prepared by [] OGC, commenting generally on the fiscal requirements (Section 112) of the initial draft of the National Intelligence Reorganization and Reform Act of 1977 (copy also attached).

2. Our reading of this memorandum and the related draft of the Act as well as Section 410 of the draft, "Central Intelligence Agency Act of 1977" (copy attached), suggests the need for clarification of intent in several areas before realistic evaluation of impact can be made.

3. We have concern, for example, that a separate "Confidential Funds" appropriation may be contemplated. Our views on the disadvantages of such a separate appropriation are set forth in a "blind" memorandum (copy attached) which was prepared this past Fall for the information of the staff of the Senate Select Committee. Until there is some consensus in the understandings of:

- (a) the organizational relationships between the office of the DNI and CIA,
- (b) the appropriations structure for those entities and
- (c) the responsibility of the CIA for maintenance of appropriation and fiscal records for entities other than CIA

evaluations of the impact of draft legislation as a basis for developing

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rationale necessary to support recommendations for changes in the draft legislation can be based only upon assumptions.

4. I am calling these matters to your attention for your general interest. We will, of course, plan to work very closely with OGC in whatever course of action is determined appropriate seeking clarification of the draft legislation as a basis for the development of comments and suggestions.

 Thomas B. Yale

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7 December 1977

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MEMORANDUM FOR : [REDACTED]
Special Assistant to the
General Counsel

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FROM : [REDACTED]
Assistant General Counsel

SUBJECT : Fiscal Requirements of Draft National
Intelligence Reorganization and Reform Act
of 1977

1. The Senate Select Committee on Intelligence has made the subject draft legislation available for comment. The draft referred to herein is a draft dated 18 November 1977. Section 112 of this draft deals with Requirements Relating to Appropriations for National Intelligence Activities. This memorandum comments on some aspects of this section that hold the potential for causing problems.

2. Paragraph (a)(1) would put an end to the technically "no-year" character of Agency funds. However, we have for many years treated Agency funds as an annual appropriation pursuant to agreement with our oversight committees. This paragraph would seem to lay the groundwork for having the Agency's appropriation available for obligation for two years. However, it is likely that there will continue to be a provision [REDACTED] such as the currently applicable Section [REDACTED] limits the period of availability of the Agency appropriation to one year. The requirement that funds for the intelligence budget be authorized by legislation sets in statute and makes applicable to both houses the authorization requirement that was originally set up in Senate Resolution 400. There was, in fact, authorizing legislation for the intelligence budget this year without, of course, revealing a figure for the total amount being authorized and without going into detail regarding the activities being authorized. It will be difficult to argue against the requirements set forth in the paragraph because they are requirements of a nature that all other federal agencies live with. Nonetheless, these requirements do represent a serious encroachment on the special character of CIA funds that has been recognized by all involved through the years. The practical impact is that the fiscal law that has built up on the lower level, through decisions of the Comptroller General, for example, will be perceived as applying to CIA in the same way they do to other agencies. In short, it will be more difficult to argue that certain fiscal requirements do not apply to

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CIA funds because of their special character. For example, the Agency will not really be in a position to argue that we need to comply with the contract formalization requirements of 31 U.S.C. 200 only as a matter of agreement and understanding with our committees. Where it might previously be argued that such requirements could be set aside as necessary, it will now appear to all concerned that such waiver is not open to us. In arriving at this conclusion it should become apparent that all the more importance is attached to clarifying the Director's special expenditure authorities under what would be the equivalent of Section 8 of the CIA Act of 1949 in any new legislation.

3. Paragraph (a)(2) would institutionalize an annual fight regarding which portion of the intelligence budget should be disclosed. It would be better to delete the language dealing with the annual recommendation so that, after an understanding is achieved regarding non-disclosure of intelligence budget figures, the matter need not be raised again each year. In the years when disclosure or non-disclosure becomes a significant political issue, no statutory provision is needed to touch off a debate.

4. Paragraph (a)(3) is likely to present a serious problem because of its lack of clarity. Because of the expansive character of its language, it would appear that this section would give the Director authority to reprogram funds between separate appropriations for separate agencies provided that the funds are expendable for national intelligence activities. Such authorities would be rather unique to say the least. As the law now stands, it is not uncommon for the head of an agency to have authority to reprogram between lines items funded by the same appropriation subject to limitations imposed by that agency's oversight committees. Also, for example, the Secretary of Defense has, pursuant to the DoD Appropriations Act, some authority to reprogram funds between separate appropriations for the Department of Defense. By comparison the authority that would be accorded the DCI to reprogram funds is far more extensive. For this reason alone, it may be necessary to make crystal clear just what is intended by this paragraph or else it will be open to the challenge that it cannot possibly mean what it seems to say. In this vein it would seem that the rather relaxed requirement for mere consultation with the appropriate committees before reprogramming by the appropriations may not be sufficient to overcome the basic requirement set forth in 31 U.S.C. 628 that the sums appropriated for various expenditures may be applied solely to the objects for which they are respectively made and for no others. Section 628 is commonly cited in support of the proposition that funds may not be transferred between appropriations.

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5. Paragraph (b)(1) would appear to establish an Intelligence Community contingency reserve in lieu of the existing CIA contingency reserve. The requirements set forth in subparagraphs (A), (B), and (C) are similar to requirements with which we now comply in using the reserve. The time limits imposed in subparagraph (B), however, establish rigidity where there has heretofore been some flexibility. This subparagraph makes it clear that the Congress wishes to go as far as it can in the direction of wielding veto power over use of the reserve without actually doing so. Paragraph 2 has a serious defect in its language. It says in effect that no obligation can be incurred against funds released from the reserve unless such obligation has been approved by the Director of OMB. In accordance with the meaning of the word "obligation" commonly understood among fiscal officers and in accordance with the definition of obligation set forth in OMB circular A-34, an obligation occurs, for example, every time an agency contracts for the purchase of certain supplies or for the performance of services. As this paragraph is currently drafted, the Director of OMB would have to act in the role of a CIA ^{approving officer} ~~certifying officer~~ and approve every ^{obligation} ~~expenditure~~ made from released reserve funds. Inasmuch as the Office of Management and Budget has previously approved the purpose of the reserve release, the ~~incidental~~ expenditures required to achieve that purpose should be left to the discretion of Agency management. It is suggested that paragraph (b)(2) simply be deleted.

6. Paragraph (b)(3) appears to be at variance with what is currently the practice in handling reserve releases. It speaks in terms of funds not actually expended for the purposes for which a release is made as remaining within the reserve. It has been understood heretofore that when a release is approved funds in the entire amount of the release are "removed" from the reserve and made available for obligation. If they are not obligated, they have in the past been "returned" to the reserve. On occasion it seems they have been used for purposes other than that of the original release, a situation which paragraph (b)(3) would seem to prohibit. However, if the interpretation were to stand that unobligated portions of a release were never removed from the reserve, a collateral problem might thereby be solved. Section 859 of Public Law 95-111 (DoD Appropriations Act for 1978) provides that "none of the funds provided by this section may be used to pay the salaries of any person or persons who authorize the transfer of unobligated and deobligated appropriations into the reserve for contingencies of the Central Intelligence Agency." While at first it was believed that this section only prohibited the transfer of unobligated balances of the annual Agency appropriation into the reserve, consultation by OLC with the Senate and House committees regarding whether this section also applied to unobligated balances of reserve releases was answered in the affirmative. This would mean that funds can only be released from the reserve and cannot be returned. However, if

under paragraph (b)(3) of the draft legislation unobligated portions of the release never left the reserve, this problem might in fact be solved.

7. Subsection (C) of Section 112 sets forth the requirement for a quarterly report to the Agency's oversight committees regarding use of the Director's special expenditure authorities. The Director of Finance has expressed the opinion that this requirement may impose a serious accounting problem on the Office of Finance depending on how the requirement is interpreted. Inasmuch as close oversight of the Agency is to be expected in any event, there seems to be no additional requirement with this quarterly report on the use of special expenditure authorities.

8. Paragraph (d) would determine a question long unresolved, that is, what the relationship of the General Accounting Office to CIA is to be. While the Agency has seriously considered the reentry of GAO for purposes of conducting a financial audit, their performance of a program management audit is thought to be unworkable. A program management audit goes beyond determining whether the dollars entrusted to our caring has been spent in accordance with their original purpose and moves into the area of studying what those purposes ought to be and how efficient they are in accomplishing our goals. Agency management will undoubtedly want to resist a program management audit by anyone outside the Agency because it is believed that there are no experts on intelligence operations outside the Agency who are qualified to perform such a review. This whole area is one that will have to be subjected to extensive additional negotiation with our oversight committees.



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REQUIREMENTS RELATING TO APPROPRIATIONS FOR
NATIONAL INTELLIGENCE ACTIVITIES

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Sec. 112. (a) (1) No funds may be appropriated for any fiscal year after September 30, 1978, for the purpose of carrying out any national intelligence activity unless funds for such activity have been previously authorized for such activity by legislation enacted during the same fiscal year or the fiscal year immediately preceding the fiscal year for which such funds are appropriated, except that the foregoing shall not apply to funds appropriated by any continuing resolution.

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(2) Each year in which legislation appropriating funds for national intelligence activities is enacted for any fiscal year, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives shall, following the enactment of such legislation, recommend to their respective Houses what information should be publicly disclosed regarding the amounts appropriated for such activities by such legislation. Each such committee shall submit its recommendations to the House concerned in such manner as such committee deems appropriate.

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(3) The Director shall have full and exclusive authority for reprogramming funds for national intelligence activities. Such authority may only be exercised within the guidelines of the Office of Management and Budget and only after consultation with the appropriate committees of Congress and the head of the entity of the Intelligence Community affected by the reprogramming of such funds. The head of any department or agency having any responsibility for carrying out national intelligence activities may request the President to review any action of the Director which proposes to reprogram any funds appropriated for the purpose of carrying out the national intelligence activities of such department or agency.

(b) (1) The Director is authorized to establish a fund to be known as the Contingency Reserve Fund and to credit to such fund only monies specifically appropriated to the Director for such fund. The Director is authorized to expend funds from the Contingency Reserve Fund in any fiscal year for the payment of expenses incurred in connection with any national intelligence activity if--

(A) the expenditure has been previously approved by the Office of Management and Budget;

(B) the appropriate committees of Congress have been notified of the facts and circumstances regarding such expenditure at least 72 hours in advance of the initiation of such expenditure; except that in extraordinary circumstances the President may authorize the expenditure of money from such fund without prior notification to the appropriate committees of the Congress if the President notifies such committees of the Congress within 48 hours after initiation of the expenditure of such funds, describes the activity for which such funds have been or are to be expended, certifies to such committees that prior notification would have resulted in a delay which would have been harmful to the United States, and discloses to such committees the reasons why the delay would have been harmful. The foregoing shall not be construed as requiring the approval of any committee of the Congress prior to the initiation of any such activity;

(C) the money from such fund is used solely for the purpose of meeting requirements that were not anticipated at the time the President's budget was submitted to the Congress for such fiscal year, the purpose for which such money was used requires protection from unauthorized disclosure, and the

activities to be funded are authorized by law.

(2) No money may be expended from the Contingency Reserve Fund for the initiation or major expansion of any activity unless the expenditure is made in compliance with the provisions of paragraph (1); and no financial obligation may be incurred under authority of this subsection unless (A) such obligation has been approved by the Director and Director of the Office of Management and Budget and (B) sufficient money therefor is available in the Contingency Reserve Fund.

(3) Money of the Contingency Reserve Fund may be expended only for the specific purpose for which expenditure was approved under this subsection and any amount approved for expenditure but not actually expended for the specific purpose for which approved shall remain in such fund.

(4) Any activity funded from the Contingency Reserve Fund which continues after the end of the fiscal year in which such activity was initiated shall be funded thereafter through the regular budgetary process at the earliest practicable time.

(c) The Director may approve the expenditure of funds to cover matters relating to national intelligence activities of an extraordinary or emergency nature. The expenditure of funds for such purposes shall be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount certified therein, but funds expended for such purpose may be expended only for activities authorized by law. The Director shall report quarterly to the committees of the Congress having jurisdiction over the national intelligence activities of the United States on expenditures made under the authority of this subsection.

(d) All funds appropriated to the Director, all funds appropriated to entities of the Intelligence Community, and all national intelligence activities of the United States, and information and material relating thereto, shall be subject to financial and program management audit and review by the

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with the approval, of any committee of the Congress having jurisdiction over matters relating to national intelligence activities, except that any funds expended for a particular activity, and the activity for which such funds are expended, may be exempted by the Director from such audit and review if the Director (1) determines such exemption to be essential to protect the security of the United States, (2) notifies the appropriate committees of the Congress of such exemption and the reasons for granting it, and (3) reports quarterly to the appropriate committees of the Congress on each activity exempted under this subsection. Any audit or review conducted by the Comptroller General of the United States under authority of this subsection shall be conducted in accordance with such security standards as the Director of National Intelligence and the committee requesting or approving such audit or review shall prescribe. Information resulting from any such audit or review shall be available in the Congress only to the committees of the Congress authorized herein to request such audit or review, except as provided under section 124 of this title.

AUTHORIZATIONS FOR APPROPRIATIONS AND EXPENDITURES

Sec. 410. (a) Notwithstanding any other provision of law,
sums made available to the Agency by appropriation or otherwise
may be expended for purposes necessary to carry out the lawful
functions of the Agency, including--

(1) supplies, equipment, and personnel and contractual services otherwise authorized by law or regulation, when approved by the Director;

(2) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; lease of buildings to the Government without regard to the limitations prescribed in section 322 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932 (40 U.S.C. 278a); health-service programs as authorized by section 7901 of title 5, United States Code; rental of news-reporting services; purchase or rental and operation of photographic reproduction, cryptographic, duplication and printing machines, equipment, and devices, and radio-receiving and radio-sending equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is

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maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; settlement and payment of claims of civilian and military personnel, as prescribed in Agency regulations consistent with the terms and conditions by which claims are settled and paid under the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 240-243); acquisition, construction and alteration of buildings and facilities without regard to the Public Buildings Act of 1959 (40 U.S.C. 601-615); and repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; but no funds may be expended for activities which have not been authorized by a law enacted during the same or immediately preceding fiscal year, except that this limitation shall not apply to funds appropriated by any continuing resolution.

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(b) (1) The Director may expend any funds appropriated or transferred to the Agency for the purpose of meeting emergency and extraordinary expenses. The expenditure of such funds for such purposes shall be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount certified therein, but such expenditures may only be for activities authorized by law. The Director shall report all expenditures made under authority of this subsection on a quarterly basis to the Committees on Appropriation of the Senate and House of Representatives, and to all other committees of the Congress having jurisdiction over the Agency.

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(c) All funds made available to the Agency, all activities of the Agency, and information relating thereto, shall be subject to financial and program management audit and review by the

with the approval of, any committee of the Congress having jurisdiction over the Agency, except that any funds expended for any particular activity, and the activity for which such funds are expended, may be exempted by the Director of National Intelligence from such audit and review if the Director of National Intelligence (1) determines such exemption to be essential to protect the security of the United States, (2) notifies the committees of the Congress having jurisdiction over the Agency of such exemption and the reasons for granting it, and (3) reports quarterly to the committees of the Congress having jurisdiction over the Agency on each activity exempted under this subsection. Any audit or review conducted by the Comptroller General of the United States under authority of this subsection shall be conducted in accordance with such security standards as the Director of National Intelligence and the committee requesting or approving audit or review shall agree to and prescribe. Information resulting from any such audit or review shall be available in the Congress only to the committees of the Congress authorized herein to request such audit or review, except as provided under section 123 of this Act.

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